

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JAMES AUSTIN ELEY,

Plaintiff,

v.

404CV192

MICHAEL HAYES,

Defendant.

ORDER

42 U.S.C. § 1983 *pro se* inmate/plaintiff James Austin Eley's civil rights claims have been summarily adjudicated, *see* doc. ## 120, 125, leaving his remaining claims for trial. Eley alleges that in 2003, during his incarceration at Coastal State Prison, he was beaten while handcuffed by correctional officer Michael Hayes. Doc. # 1. He claims injuries to his back, neck, and shoulder. *Id.* Trial is now scheduled for 9/10/07. Doc. # 159.

The Court has been addressing a flurry of last minute motions, and in its 9/4/07 Order noted that, "in light of Eley's new-found wealth, doc. # 167, the Deputy Clerk shall ensure that any unpaid filing fees (Eley had been granted *in forma pauperis* status at the commencement of this case) shall now be promptly paid from the above-mentioned \$1500." Doc. # 170 at 2. Eley had just deposited \$1500 with the Court to cover various expenses and claimed: "I have unlimited funds." Doc. # 167.

Moving to dismiss, or in the alternative, to revoke Eley's IFP status, doc. # 175, Hayes points to that "unlimited funds" assertion in presuming that Eley must have misled this Court about his indigency at the 10/6/03 inception of this case, *see* doc. # 2 (IFP affidavit); # 3 (Order granting IFP). Doc. # 175 at 1-2 (reminding the Court that it can dismiss Eley's case under 28 U.S.C. §

1915(e)(2)(A) "at anytime if the court determines that the allegation of poverty is untrue"). Of course, that's just pure speculation. A lot can happen in four years (Eley could have inherited money, etc.) and this Court proceeds on facts, not conjecture. The motion is thus denied without prejudice to renew it should defendant turn up some *facts*.

The remainder of Hayes's motion -- to revoke Eley's IFP status -- is moot in light of this Court's 9/4/07 Order doing just that.

Accordingly, defendant Michael Hayes's motion to dismiss (doc. # 175) is **DENIED**.

This 6 day of September, 2007.


B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

U.S. DISTRICT COURT
SAVANNAH DIV.
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CLERK *[Signature]*
SO. DIST. OF GA.